IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 13678 of 2004

Between:

M/s. New Gayathri Wines, Kadapa Road, Mydukur, Kadapa District, rep by its Licencee B.N. Venkata Subbaiah S/o Pedda Rama Subbanna, Mydukur, Kadapa, Kadapa District

..... PETITIONER

AND

1 The Commissioner of Prohibition & Excise, Hyderabad
2 Dy. Commissioner of Prohibition & Excise Kurnool
3 The Sub-Divisional Officer (Prohibition & Excise), Kadapa Kadapa District
4 The Superintendent (Prohibition & Excise), Kadapa, Kadapa District
5 The Inspector of Prohibition & Excise, Prohibition & Excise Station, Mydukur, Kadapa District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction, more particularly one in the nature of Writ of Mandamus, declaring the impugned proceedings of the 4th respondent vide Proc. Rc. No. 1421/2001-A3 dt 25-6-2004 as illegal, improper and contrary to law and the same is hit by principles of natural justice being violative of Article 21 of the Constitution of India.

Counsel for the Petitioner : MR. N.BHARAT BABU

Counsel for the Respondents : GP FOR PROHIBITION & EXCISE

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.13678 OF 2004

ORAL ORDER :

The petitioner is holding a licence in Form IL-24 and carrying on retail sale of Indian Liquor and Foreign Liquor in the name and style of M/s. New Gayatri Wines at Mydukur, Kadapa District. It appears that, in the year 2001, Criminal proceedings were initiated against the petitioner for the alleged offence under Section 34(a) of the A.P. Excise Act, 1968 (for short, 'the Act'). Subsequently, a show-cause notice was issued calling upon the petitioner to explain why the licence should not be cancelled under Section 31(1)(b) of the Act. Though the petitioner submitted the explanation denying all the allegations, the licence was cancelled on 01-01-2001 by the 4th respondent – The Superintendent (Prohibition & Excise), Kadapa under Section 31(1)(b) of the A.P. Excise Act, 1968. The petitioner preferred an Appeal before the 2nd respondent – Deputy Commissioner of Prohibition & Excise, but the same was dismissed without assigning any reasons. Aggrieved by the same, the petitioner preferred W.P.No.2129 of 2002 which was allowed by this Court on 11-11-2002 and the order of cancellation was set aside observing that it will not preclude the respondents from conducting an enquiry and to pass final orders in accordance with law. Subsequently, the licence was renewed for a further period i.e., 2003-2004 by the 4th respondent on 01-07-2003 by collecting licence fee of Rs.3,75,000/-.

Thereafter, the 4th respondent passed an order of cancellation dated 09-09-2003 without conducting an enquiry as directed by this Court and merely basing on the report of the third respondent – Sub-Divisional Officer (Prohibition & Excise), Kadapa, dated 08-09-2003. The said order dated 09-09-2003 was challenged by the petitioner by filing W.P.No.21333 of 2003. This Court allowed the said writ petition, however, leaving it open to the respondents to conduct a fresh enquiry as per law after furnishing al the required documents and after affording an opportunity to the petitioner. In pursuance of the same, the licence of the petitioner was renewed upto 31-07-2004 by collecting Rs.1,50,000/- and the petitioner was directed to appear before the Station House Officer (Excise). Though the petitioner appeared before the authority, without furnishing any report or notice of the proposed action, his licence was cancelled on 15-04-2004. The said order was challenged in W.P.No.7478 of 2004, which was allowed by this Court on 23-04-2004 holding as under :

"In view of the violation of principles of natural justice by not furnishing a copy of the enquiry report and giving an opportunity of being heard to the petitioner before passing the impugned order, the impugned order is set aside and the matter is restored to the file of the fourth respondent. The fourth respondent is directed to issued a show-cause notice along with a copy of the enquiry report to the petitioner proposing to take action basing on the enquiry report. The petitioner can file his objections on the enquiry report and after hearing the petitioner, fourth respondent is at liberty to pass appropriate orders on merits."

It is not in dispute that, in pursuance of the said order, show-cause notice was issued to the petitioner on 24-05-2004 and the petitioner was also supplied a copy of the enquiry report dated 04-03-2004. In response to the same, the petitioner submitted his explanation on 07-06-2004. Thereafter, an order dated 25-06-2004 has been passed canceling the licence of the petitioner which is under challenge in this writ petition.

I have heard the learned Counsel for the petitioner and the learned Government Pleader for Prohibition & Excise appearing for the respondents.

The learned Counsel for the petitioner contends that the impugned order of cancellation which was passed without considering any one of the contentions

raised in the explanation offered by the petitioner and assigning any reasons and particularly without affording an opportunity of being heard as directed by this Court is arbitrary and illegal apart from being in violation of the principles of natural justice. The learned Counsel contends that the impugned order is liable to be set aside in limini on the said ground alone.

The fact that the petitioner was not given an opportunity of personal hearing has not been denied by the respondents. The record placed before this Court by the learned Government Pleader does not disclose that the petitioner was afforded any such opportunity. Moreover, on a perusal of the impugned order, it is clear that the respondent except narrating the facts and stating that the explanation offered by the licensee is not convincing, has not assigned any reasons in support of his conclusion. Such a cryptic order by the Licensing Authority while canceling the licence is unsustainable. The law is well settled that absence of any reasons is one of the grounds for Judicial Review since the failure to assign reasons would result in violation of the principles of natural justice.

Accordingly, the impugned order dated 25-06-2004 is set aside and the Writ Petition is allowed. No costs.

This shall not preclude the respondents to pass appropriate orders afresh following due process of law after hearing the petitioner as directed by this Court in W.P.No.7478 of 2004.

Writ Petition is accordingly allowed. No costs.

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30th September, 2004.

Gbs

To

1 The Commissioner of Prohibition & Excise, Hyderabad
2 The Dy. Commissioner of Prohibition & Excise, Kurnool
3 The Sub-Divisional Officer (Prohibition & Excise), Kadapa Kadapa District
4 The Superintendent (Prohibition & Excise), Kadapa, Kadapa District
5 The Inspector of Prohibition & Excise, Prohibition & Excise Station, Mydukur, Kadapa District

6.2CCs to G.P. for Proh. & Excise,High Court of AP Bldgs, Hyderabad (OUT).

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